

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

PAUL L. DOUGLAS
Attorney General

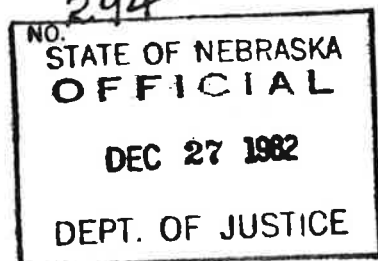
GERALD S. VITAMVAS
Deputy Attorney General

WARREN D. LICHTY, JR.
Assistant Attorney General
Chief Counsel
Department of Roads

State Highway Building
P.O. Box 94759
Lincoln, Nebraska 68509-4759
Telephone (402) 473-4611

ASSISTANT ATTORNEYS
GENERAL

GARY R. BELCH
JOHN P. GERAN
DALE L. BASCOCK, JR.
ROBERT B. AVEY
RANDALL E. SIMS
JOHN E. BROWN
WILLIAM J. DRESTER
SHARON M. LINDGREN



December 20, 1982

SUBJECT: Surveyor Registration Exemption under
Neb.Rev.Stat. §81-8,126 (Reissue 1981).

REQUESTED BY: William L. Howland, Dawes County Attorney,
P.O. Box 1140, 342 Main Street, Chadron,
Nebraska, 69337.

OPINION BY: Paul L. Douglas, Attorney General;
Randall E. Sims, Assistant Attorney
General.

QUESTION: Is a person who is not a full time em-
ployee of the United States government,
but rather is a "contract" surveyor,
exempted from Nebraska statutory regis-
tration requirements?

CONCLUSION: No.

On the assumption that the person in question is, in fact, an independent contractor, it is not considered that he would be exempted from the provisions of Neb.Rev.Stat. §§81-8,108 to 81-8,127 (Reissue 1981), the act dealing with surveyors. Section 81-8,108 of that act states:

"In order to safeguard life, health, and property, any person practicing or offering to practice land surveying in this state shall hereafter be required to submit evidence

that he is qualified so to practice and shall be registered as provided in sections 81-8,108 to 81-8,127; and after January 1, 1958, it shall be unlawful for any person to practice or to offer to practice land surveying in this state unless such person has been duly registered under the provisions of sections 81-8,108 to 81-8,127."

Neb.Rev.Stat. §81-8,126 (Reissue 1981) states:

"Sections 81-8,108 to 81-8,127 shall not apply to any land surveyor working for the United States government, while performing his duties as an employee of said government, nor to any person employed as an assistant to a land surveyor registered under the provisions of sections 81-8,108 to 81-8,127."

A surveyor who is an employee of the U.S. government would be exempt from Nebraska statutory requirements while doing work for the U.S. government. While an independent contractor could be deemed to be doing work for the United States government, it is not considered that he would meet the second test of "performing his duties as an employee of said government".

It is admitted that determination of independent contractor status is often difficult to do. A reading of the case of Showers v. Land, 123 Neb. 56, 242 N.W. 258 (1932) is recommended in this regard. Essentially, that case held that the major test in determining independent contractor status was whether the employment relationship could be terminated without liability. If not, the person would be considered an independent contractor.

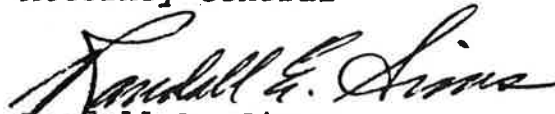
There is one further area to explore, namely, whether the person in question is practicing or offering to practice surveying as defined in Neb.Rev.Stat., §81-8,109(4) (Reissue 1981). That sub-section states:

"Land surveying shall mean and include the surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land monuments and boundaries and the platting of lands and subdivisions thereof."

If the work the person in question is doing is not within the purview of that section, it would not be considered that registration would be required.

Very truly yours,

PAUL L. DOUGLAS
Attorney General


Randall E. Sims
Assistant Attorney General

RES/ta

Approved:


Paul L. Douglas
Attorney General

1885

1886

1887

1888

1889

1890

1891